

BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

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In the Matter of

Access Charge Reform

Complete Detariffing for Competitive Access Providers  
and Competitive Local Exchange Carriers

CC Docket No. 96-262

CC Docket No. 97-146

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

COMMENTS  
of the  
GENERAL SERVICES ADMINISTRATION

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## **Summary**

GSA explains that while the Commission should detariff IXC's services to end users as soon as possible, tariffs for services provided by competitive LECs to IXCs serve many vital functions, and should be continued.

At the outset, the Communications Act and the need to maintain an integral nationwide communications capability require that the rates, terms and conditions for access services are definite, clear, and immediately known. Establishment of the key parameters governing interconnections should not be left to an amorphous bargaining process. Although carriers may ultimately be forced to interconnect, delays for negotiation of rates and charges and for the inevitable legal challenges may seriously limit communications options and impair achievement of the Commission's pro-competitive and universal service initiatives.

A recent dispute between a major IXC and several competitive LECs shows that limitations on consumer choice from lack of agreement on access charges are not merely a "theoretical possibility." This dispute, which is potentially harmful to consumers, is simply "the tip of the iceberg" that will be observed if detariffing is required.

GSA also explains that detariffing will not lead to widespread reductions in access charges. Benefits will be geographically concentrated, and will accrue principally to the larger carriers — both IXCs and LECs — who are positioned with the greatest bargaining power in each case.

Finally, GSA explains that detariffing will cause competitive LECs to incur substantial costs for negotiating, and periodically re-negotiating, access charges with a multitude of IXCs. Moreover, competitive LECs will not be relieved of producing and maintaining access tariffs, because of the requirements set by state regulators who will be concerned that negotiated intrastate access services may be supported by basic local service offerings.

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**COMMENTS  
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GENERAL SERVICES ADMINISTRATION**

The General Services Administration ("GSA") submits these Comments on behalf of the customer interests of all Federal Executive Agencies ("FEAs") on the Public Notice ("Notice") released on June 16, 2000. The Notice seeks comments and replies on mandatory detariffing of interstate access services provided by competitive local exchange carriers ("LECs").

**I. INTRODUCTION**

Pursuant to Section 201(a)(4) of the Federal Property and Administrative Services Act of 1949, as amended, 40 U.S.C. 481(a)(4), GSA is vested with the responsibility to represent the customer interests of the FEAs before Federal and state regulatory agencies. From their perspective as end users, the FEAs have consistently supported the Commission's efforts to bring the benefits of competitive markets to consumers of all telecommunications services.

On October 31, 1996, the Commission released the *IXC Detariffing Order*, which required nondominant interexchange carriers ("IXCs") to cancel their tariffs for

interstate, domestic, interexchange services by the end of a transition period.<sup>1</sup> Several carriers sought reconsideration of the order and requested review by the Court of Appeals for the District of Columbia Circuit.<sup>2</sup> The court stayed the Commission's order pending review.<sup>3</sup>

On April 28, 2000, the court upheld the Commission's detariffing requirements for IXC services. On May 9, 2000, after the court lifted its stay, the Commission issued the *IXC Detariffing Notice* requesting comments and replies on issues concerning implementation of the detariffing rules prescribed four years previously.<sup>4</sup>

GSA submitted Comments and Reply Comments responding to the *IXC Detariffing Notice*. In those submissions, GSA concurred with the Commission that requirements for nondominant IXCs to file tariffs for interstate, domestic, interexchange services are not necessary to protect consumers at this time.<sup>5</sup> Consequently, GSA urged the Commission to prescribe mandatory detariffing for IXCs' services.<sup>6</sup> GSA also urged the Commission to eliminate the prescribed nine-month transition period for detariffing contract services and long-term service agreements.<sup>7</sup>

With respect to the benefits of detariffing, however, it is important to distinguish services provided by competitive LECs to IXCs from services provided by IXCs to end

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<sup>1</sup> *In the Matter of Policy and Rules Concerning the Interstate, Interexchange Marketplace, Second Report and Order*, released October 31, 1996 ("*IXC Detariffing Order*").

<sup>2</sup> *In the Matter of Policy and Rules Concerning the Interstate, Interexchange Marketplace*, Order on Reconsideration, 12 FCC Rcd 15014 (1997) ("*Reconsideration Order*"), and Second Order on Reconsideration (1999) ("*Second Reconsideration Order*").

<sup>3</sup> *Notice*, p. 2.

<sup>4</sup> *In the Matter of Policy and Rules Concerning the Interstate, Interexchange Marketplace*, Public Notice, released May 9, 2000 ("*IXC Detariffing Notice*").

<sup>5</sup> Comments of GSA, May 31, 2000, pp. 4–8; and Reply Comments of GSA, June 9, 2000, pp. 3–4.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*, Comments of GSA, pp. 6–8; and Reply Comments of GSA, pp. 9–10.

users. In the case of IXC services to end users, tariffs present a significant barrier to competition. On the other hand, tariffs for services provided by competitive LECs to IXCs serve a vital function in promoting more competition. Consequently, while the Commission should detariff services provided by IXCs to end users, GSA urges the Commission not to prescribe mandatory detariffing of access services of competitive LECs.

## **II. MANDATORY DETARIFFING OF ACCESS SERVICES WILL LIMIT COMMUNICATIONS OPTIONS AND IMPEDE ACHIEVEMENT OF THE COMMISSION'S PRO-COMPETITIVE AND UNIVERSAL SERVICE INITIATIVES.**

Several provisions of the Communications Act prescribe obligations on IXCs concerning services to end users and impose duties on IXCs to interconnect with other carriers.<sup>8</sup> For example, the legislation imposes an obligation on every common carrier engaged in interstate or foreign communications "to furnish such communication service upon reasonable request therefore . . ."<sup>9</sup> In addition, telecommunications carriers are required "to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers."<sup>10</sup>

Because of these legislative provisions and the need to maintain an integrated nationwide communications capability, IXCs cannot lawfully refuse to carry traffic presented to them on the grounds that originating or terminating access charges are too high. Similarly, competitive LECs cannot lawfully refuse to terminate a message presented by an IXC or refuse to present traffic to the IXC selected by the originating caller on the grounds that access compensation would be inadequate.

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<sup>8</sup> Pub. L. No. 104-104, 110 Stat. 56 ("1996 Act"). The 1996 Act amended the Communications Act of 1934, 47 U.S.C. §§ 151-174.

<sup>9</sup> 47 U.S.C. §201(a).

<sup>10</sup> 47 U.S.C. §251(a).

While continuous and efficient interconnections are necessary, they require that the rates, terms and conditions for access services be definite and clear. Establishment of these rates, terms and conditions should not be left to an amorphous bargaining process. In short, removal of all regulatory surveillance — except through a complaint process — makes it a practical impossibility to implement the requirements for efficient interconnections. Although carriers will ultimately be forced to interconnect, delays for negotiation of the rates and charges and for inevitable legal challenges may seriously limit communications options and impair achievement of the Commission's pro-competitive and universal service initiatives.

Potential service disruptions from lack of agreement on access charges are not merely a "theoretical possibility." On June 14, 2000, a large IXC filed a petition seeking a declaratory ruling to the effect that it was not obligated to pay "excessive" access charges.<sup>11</sup> Competitive LECs responded with a series of counter claims. These included the allegation that the IXC was instructing some competitive LECs not to provide originating traffic and to cease presubscribing customers to the IXC.<sup>12</sup>

GSA submits that this dispute, irrespective of its merits, is simply "the tip of the iceberg" that will be observed if mandatory detariffing is prescribed. Clearly, such disputes harm consumers for all telecommunications services regardless of their resolution. To ensure that consumers are not constrained in their choices of interexchange or local exchange carriers, the Commission should not require detariffing of access services.

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<sup>11</sup> AT&T Declaratory Ruling Petition, June 14, 2000, *passim*.

<sup>12</sup> *In the Matter of Request for Emergency Temporary Relief Enjoining AT&T Corp. from Discontinuing Service Pending Final Decision*, Reply Comments of Rural Independent Competitive Alliance, *et al.*, June 29, 2000, pp. 5-15.

### **III. DETARIFFING BY COMPETITIVE LOCAL EXCHANGE CARRIERS WOULD NOT LEAD TO GENERAL REDUCTIONS IN ACCESS CHARGES.**

The Commission has sought comments in several proceedings concerning market-based approaches to ensure that competitive LECs' charges for interstate access are just and reasonable.<sup>13</sup> Comments by competitive LECs in response to these requests demonstrate that mandatory detariffing will not lead to general reductions in access charges.<sup>14</sup>

Without the structure provided by filed tariffs, access charges will vary widely among combinations of interexchange and local exchange carriers, and among geographical areas, depending on the relative negotiating strength of each carrier for services at each location. Large IXCs with significant "purchasing power" for special access services will be able to negotiate lower access charges. Since competition ultimately forces charges for interexchange services to end users to be nearly equal among carriers, smaller IXCs will have less motivation to offer originating services to locations where access charges are high and potential profits are more limited.

Moreover, smaller competitive LECs lacking significant negotiating power will also be disadvantaged, particularly in comparison with the incumbent carrier, whose access costs will generally be lower because of economies of scale. In fact, in many instances a LEC without compensating revenues from special access charges could only compete by offering services at an unprofitable level below a fairly high cost floor.

Furthermore, the potential for anti-competitive conduct is significantly increased by the fact that several of the larger IXCs are beginning to offer local exchange services in selected areas. These IXCs would have the incentive and the ability to

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<sup>13</sup> Notice, p. 1.

<sup>14</sup> See, for example, Comments of Allegiance Telecom, October 29, 1999, p. 19.



disadvantage a competing LEC by delaying a necessary interconnection agreement, or by demanding substantial rate concessions. Such actions would impair implementation of the Commission's continuing efforts to ensure equal access for all carriers.

In many instances, a principal result of mandatory detariffing would be a significant increase in negotiating power of the carriers which already enjoy the greatest leverage. Rather than a general reduction in access charges, the principal result would be a reduction in opportunities for effective local competition. Limitations on opportunities for competition are contrary to the interests of end users (business as well as residential) in all markets. For this additional reason, GSA urges the Commission to eschew mandatory detariffing of access services by competitive LECs.

#### **IV. MANDATORY DETARIFFING PLACES A BURDEN ON COMPETITIVE LOCAL EXCHANGE CARRIERS TO NEGOTIATE ACCESS CHARGES WITH ALL IXCs.**

To maintain end users' abilities to choose any competitive LEC serving a location, and allow users to select the IXCs which will handle messages originating there, originating and terminating access charges must be defined for tens of thousands of combinations of local and interexchange carriers nationwide. As the Competitive Communications Group explained, requirements for negotiations "complicate a competitive LEC's life beyond reason."<sup>15</sup>

Competitive LECs cannot predict which IXCs might wish to originate traffic in a market. Therefore, the competitive LECs must market services to new subscribers only to find that they have no access agreements with the IXCs that these subscribers have

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<sup>15</sup> Comments of Competitive Communications Group, October 29, 1999, p. 7.

chosen. Then, the ability of competitive LECs to provide services would be delayed — or potentially lost — while they seek out and negotiate with the necessary carriers.

The only feasible alternative — negotiation of rates, terms and conditions for access with all potential IXCs — is an expensive and time-consuming process. The Commission can avoid this unnecessary obstacle to more competition by not prescribing mandatory detariffing for access services of competitive LECs.

**V. WITH MANDATORY DETARIFFING, COMPETITIVE LECs WOULD STILL BE REQUIRED TO MAINTAIN TARIFFS TO MEET REQUIREMENTS OF STATE REGULATORS.**

While detariffing would cause competitive LECs to incur substantial costs for negotiating, and periodically re-negotiating, access charges with hundreds of IXCs, most carriers would still not be relieved of the burden of producing and maintaining access tariffs. Indeed, it is likely that requirements for tariffing intrastate access services would continue in most states.

The FEAs' experience as end users of interexchange and local telecommunications services shows that state regulators have continued to maintain a vital interest in intrastate access charges. With ample justification, state regulators perceive that LECs view a trade-off between intrastate access charges and the charges for basic local exchange services in meeting their overall intrastate revenue needs. Higher intrastate access charges allow lower basic local rates, and vice versa.

To help ensure widespread subscription to local services and meet other policies, state regulators are cautious in taking steps that might lead to increases in basic local exchange rates. From the state regulators' perspective, negotiated arrangements arising from detariffing of intrastate access services could result in non-compensatory access charges that place a burden on "general ratepayers."

Because of the potential impacts on charges for basic local services, most state regulatory agencies will continue tariffing requirements for intrastate access. Federal detariffing coincident with state tariffing will place the maximum possible cost and regulatory burden on competitive LECs — requirements to negotiate individual contracts and to prepare tariffs. The dual requirements will constitute a significant burden for some competitive LECs, particularly carriers beginning to provide services in a region. GSA urges the Commission to avoid this potential barrier to competition by not prescribing mandatory detariffing of access services.

## VI. CONCLUSION

As a major user of telecommunications services, GSA urges the Commission to implement the recommendations set forth in these Comments.

Respectfully submitted,

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July 12, 2000

## CERTIFICATE OF SERVICE

I, MICHAEL J. ETTNER, do hereby certify that copies of the foregoing "Comments of the General Services Administration" were served this 12th day of July, 2000, by hand delivery or postage paid to the following parties.

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